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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,303	01/02/2002	Charles F. Butler	Butler *6	6805

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James D. Hall
Botkin & Hall, LLP
Suite 400
105 East Jefferson Blvd.
South Bend, IN 46601

EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary	Application No.		Applicant(s)	
	10/039,303		BUTLER, CHARLES F.	
	Examiner		Art Unit	
	Justine R Yu		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 02 June 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is responsive to the amendment filed on 6/2/032. As directed by the amendment, claims 1, 2, 7, and 8 were amended; no claim was canceled nor added. Thus, claims 1-8 are presently pending in this application.

Claim Rejections - 35 USC § 112

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, step D, it is not clear how to move the location of the vibration from one part to another part by only varying the frequency of the signal by scanning. What structural element being used to perform the scanning function?

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 6-8 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Murtonen (5,113,852).

Murtonen teaches a vibration device having a wave generator 1, a minimum of one transducer (loudspeakers 2a-2d) being located adjacent to the user, and the frequency range is between 20-200 Hz (within the claimed 20-800 Hz range). Murtonen in column

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4, lines 18-22 and 35-45 teaches that the frequency range and amplitude can be adjusted. The step of adjusting the vibration frequency and the wave like vibration caused by the vibrators read on the step of varying the frequency of the signal by scanning to move the location of the vibration from one part to another part of the body.

5. Claims 1-3 and 5-7 as best understood are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Skille et al (5,101,810).

Skille teaches a device having the same structure as claimed including a wave generation device (4, 5) and a loudspeaker (8-8"). In column 5, line 66 to column 6, line 2, Skille's teaches step of varying the frequency in the sequence. Thus, Skille's device would be able to perform the step of varying the frequency of the signal by scanning

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murtonen.

Murtonen in column 4, lines 19-22 teaches that the amplitude can be varied but lacks a detail description that the amplitude is selectively varied between 0 and 120 decibels. However, the feature of choosing a particular range, i.e., between 0-120 decibels is considered as an obvious design choice within the knowledge of one skill in the art, as is necessary and inherent upon various applications.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murtonen in view of Skille et al (5,101,810).

Murtonen does not explicitly disclose step of providing a rhythmic beat to the signal. However, Skille teaches method of superimposing music (with rhythmic beat) to the vibration signal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Murtonen's vibration signal with music as taught by Skille, in order to enhance the therapeutic result.

Response to Arguments

9. Applicant's arguments filed 6/2/03 have been fully considered but they are not persuasive. The applicant in his remarks first argues that Skille adjusts the frequency in discrete or separate increments where the frequency remains constant for a selected duration. While it is true that Skille adjusts the frequency in separate increments, it is the examiner's position that the adjustment step reads on the scanning function because, according to the Webster's II New Riverside University Dictionary, the word "scan" means to examine closely, or to search automatically for specific data. Skille in column 5, line 66 to column 6, line 2 clearly states that "both acute muscular trauma and post-operative convalescence has reacted positively to the sequence 40/60/80/60/40 Hz with approximately 6 minutes duration per frequency". Since Skille's vibrator is set to have frequency changing in 6 minutes duration, Skille reads on the scanning step. Also, it is the examiner's position that changing in frequency of the vibration can only change the speed of the vibration, and the location of the vibration should remain the same.

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The applicant further argues that Murtonen uses two vibrators rather than one vibrator. The applicant is reminded that the term "minimum of one transducer" can be any number that is more than one.

The applicant further argues that the variation from 0-120 decibels is nether necessary or inherent from the prior art. The argument is not well taken because as acknowledged by the applicant, Murtonen in column 6, lines 54-58 discloses that the intensity of vibration of each of the vibrator periodically between maximum and minimum values other than zero, see also figures 3 and 4. Thus, choosing a particular range, i.e., selectably varied the amplitude between 0 and 120 decibels is a design choice within the knowledge of skill in the art.

Response to Amendment

10. The Declaration under 37 CFR 1.132 filed 6/2/03 is insufficient to overcome the rejection of claims 1-8 based upon Murtonen and Skille et al references as set forth in the last Office action because: the declaration only provides opinions from the inventor rather than facts to support the allegation why Murtonen and Skille cannot be able to perform the same method steps.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lee et al (6,461,316) and Matthews (5,269,304) are cited to show different therapy devices.

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12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

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Justine R Yu
Primary Examiner
Art Unit 3764

August 4, 2003